S T A T E O F M I C H I G A N

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of **DTE Electric Company** for the reconciliation of its Power Supply Recovery Plan for the 12-month period ending December 31, 2015	)))))	Case No. U-17680-R

NOTICE OF PROPOSAL FOR DECISION

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on April 6, 2017.

Exceptions, if any, must be filed with the Michigan Public Service Commission, 7109 West Saginaw, Lansing, Michigan 48917, and served on all other parties of record on or before April 27, 2017, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before May 11, 2017. **The Commission has selected this case for participation in its Paperless Electronic Filings Program. No paper documents will be required to be filed in this case.**

At the expiration of the period for filing exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for Decision is reviewed by action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.

MICHIGAN ADMINISTRATIVE HEARING SYSTEM
For the Michigan Public Service Commission

Dennis W. Mack

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Dennis W. Mack
Administrative Law Judge

April 6, 2017
Lansing, Michigan

S T A T E O F M I C H I G A N

MICHIGAN ADMINISTRATIVE HEARING SYSTEM

FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

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PROPOSAL FOR DECISION

I.

PROCEDURAL HISTORY

On March 31, 2016, DTE Electric Company (Company) filed an Application with the Michigan Public Service Commission (Commission) under §6j, *et seq*., of 1982 PA 304 (Act 304). MCL 460.6j. Through the Application the Company seeks to reconcile its actual power supply cost recovery (PSCR) revenues collected under its PSCR factors with the actual power supply costs it incurred in 2015. Generally, the Company contends that during 2015 it had a total PSCR over-recovery of $15,430,979, which includes interest. This over-recovery reflects a January 2015 PSCR beginning balance of $12,829,341, including interest, set by the Commission in its 2014 PSCR reconciliation case. See Case No. U-17319-R, January 19, 2016 Order, pg. 3.

Pursuant to due notice, a pre-hearing conference was conducted on June 6, 2016. The Company and Commission staff appeared at that proceeding, and intervention was granted to the Attorney General and Michigan Environmental Council (MEC). Consistent with the schedule established during the pre-hearing conference, the hearing in this matter was conducted on January 11, 2017. During the hearing, the Company entered the testimony of:

1. Michael E. Banks, Performance Manager in the Fossil Generation Department;

2. Janet L. Brodnax, Manager, Gross Margin;

3. Shawn D. Burgdorf, Supervisor of the Tactical Merchant Analytics Team. Generation Optimization Department;

4. Kelley A. Holmes, DTE Energy Corporate Services LLC, Principal Financial Analyst – Regulatory Economics, in Regulatory Affair;

5. Barry J. Marietta, DTE Energy Corporate Services LLC, Environmental Management & Resources, Supervisor – Emissions Quality;

6. Ariel E. Moore, Director of Nuclear Support;

7. David G. Nick, DTE Energy Corporate Services, LLC, Regulatory Compliance Consultant in the Federal Regulatory Affairs Department;

8. Kevin L. O'Neill, DTE Energy Corporate Services LLC, Principal Project Manager in Regulatory Affairs;

9. Ryan C. Pratt, Supervisor, Planning and Procurement, Fuel Supply Department;

10. John O. Yurko, Senior Technical Specialist, Generation Optimization Organization;

11. Kenneth Johnston, Manager of Community Lighting;

12. Edward Solomon, Assistant Treasurer and Director of Corporate Finance, Insurance and Development.[1]

Through these witnesses, the Company entered Exhibits A-1 through A-25, and A-27 through A-32.

[1] All of the witnesses, except Mr. Johnston and Mr. Solomon who only provided rebuttal testimony, provided direct testimony. In addition, Mr. Banks, Ms. Holmes, Mr. Marietta, Mr. Pratt, Mr. Burgdorf and Mr. Yurko provided rebuttal testimony.

The MEC offered the testimony of George W. Evans, President of Evans Power Consulting, Inc., and George E. Sansoucy, the principal of George E. Sansoucy, P.E., LLC, and entered Exhibits MEC-1 through MEC-5 and MEC-8 through MEC-38. The Attorney General offered the testimony of Michael J. McGarry, Sr., a Senior Technical Consultant with Blue Ridge Consulting Services, and entered Exhibits AG-1 through AG-3. Staff offered the testimony of Gretchen M. Wagner, an Auditor in the Act 304 Reconciliations Section of the Financial Analysis and Audit Division, and entered Exhibits S-1 through S-6.

Prior to the hearing, a Stipulated Protective Order was entered. 2 See Dkt. # 073. In addition, the Company filed a Motion to Strike portions of Mr. Sansoucy's testimony and exhibits. However, under an agreement between the Company and MEC, the Motion was withdrawn provided notice was taken under MCL 24.277 of the Company's 2015 Form 10-K filed with the Securities and Exchange Commission on February 10, 2016. 2 TR 18-19. Subsequent to the hearing, all of the Parties filed Initial Briefs, and while the Company, MEC, and Staff filed Reply Briefs.

II.

<u>STATUTORY REQUIREMENTS</u>

Act 304 provides for a multi-step PSCR process. The first is the inclusion of a PSCR clause in a utility's rate schedule that allows it "to charge customers for the anticipated costs associated with the supply of electric power, such as the cost of coal or other fuel burned by generating plants." *Attorney General v Michigan Public Service Commission*, 237 Mich App 27, 30; 602 NW2d 207 (1999). Once that clause is in place,

2 Exhibit MEC-38 is confidential, and its use is subject to this Order.

the utility is obligated to annually file a PSCR plan and five-year forecast of its power supply requirements. MCL 460.6j(3)-(5). Through a contested case, the Commission approves, disapproves, or modifies the plan for the upcoming year, and evaluates the forecast. MCL 460.6j(6)-(7).[3] The final step is the reconciliation process:

> Not less than once a year, and not later than 3 months after the end of the 12-month period covered by a utility's power supply cost recovery plan, the commission shall commence a proceeding, to be known as a power supply cost reconciliation, as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969. Reasonable discovery shall be permitted before and during the reconciliation proceeding in order to assist parties and interested persons in obtaining evidence concerning reconciliation issues including, but not limited to, the reasonableness and prudence of expenditures and the amounts collected pursuant to the clause. At the power supply cost reconciliation the commission shall reconcile the revenues recorded pursuant to the power supply cost recovery factors and the allowance for cost of power supply included in the base rates established in the latest commission order for the utility with the amounts actually expensed and included in the cost of power supply by the utility. The commission shall consider any issue regarding the reasonableness and prudence of expenses for which customers were charged if the issue was not considered adequately at a previously conducted power supply and cost review.
> MCL 460.6j(12).

In addition to these general factors, specific costs that are unrecoverable without prior Commission approval are enumerated in MCL 460.6j(13). Finally, the mechanisms for refunding the amount over-recovered, or collecting the amount under-recovered, are set forth under MCL 460.6j(14)-(15).

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[3] The Company has a Commission approved PSCR clause (Case No. U-13808), and its 2016 PSCR Plan was approved by the Commission in an Order entered on January 19, 2016, in Case No. U-17680. In accordance with that Plan, and ultimately with the Order approving the Plan, the Company implemented a PSCR factor of 2.58 mills/kWh for 2015. 2 TR 90. On January 1, 2016, the Company implemented a (0.20) mills/per kWh PSCR factor consistent with the 2016 PSCR Plan case, U-17920, which was approved by the Commission in Orders entered on January 12, 2017 and February 28, 2017. Id., 91.

III.

THE COMPANY'S REPORTED 2015 PSCR REVENUES AND EXPENSES

For the 12-month period ending on December 31, 2015 (PSCR Year), the Company contends it had a total PSCR total over-recovery of $15,430,979, including net interest of $878,743, that it proposes to roll-over as the January 2016 PSCR beginning balance. 2 TR 90; Exhibit A-14. To that end, the Company seeks the adoption of nine (9) Findings of Fact.

A. Planned and Unplanned Generation Outages

Through the testimony of Mr. Banks, the Company provided the basis for the outages at its non-nuclear generation facilities during the PSCR Year. In regards to the planned outages, the Company developed and implemented a 2015 Periodic Outage Plan for maintenance during non-peak periods in the spring and fall. 2 TR 26-27; Exhibits A-1 through A-5. Mr. Banks testified that in general, the Plan for fossil steam units was followed and the work completed in the projected time-frames, or the work was deemed unnecessary and not undertaken. 2 TR 26. 33. Mr. Banks provided the reasons for the projects that exceeded the projected time-frames, which none of the other parties took issue with. Id., 26-31. Mr. Banks testified one unit, River Rouge 2, had a forced outage in 2015, stemming from a problem detected during the re-start from a planned 10-hour maintenance project, that resulted in a 100 day and counting outage. Id., 31-33. The Company was in the process of retiring the unit in 2016. Id., 33. Planned and forced outages occurred at the Ludington Pumped Storage Facility, which is operated and maintained by Consumers Energy with input from the Company. Id., 34-35. A number of peaker units had outages lasting more than 90 days during the PSCR Year. Id., 35-37. Mr. Banks provided the reasons for the outages, along with the status of the unit as of the date of his testimony. Id., 37-44. Mr. Banks testified that the Company's actions concerning planned and unplanned outages at its non-nuclear units were reasonable and prudent, and the record is devoid of any evidence to the contrary. Id., 44-45.

Outages at the Company's nuclear facility, Fermi 2, were testified to by Mr. Colonnello. The facility achieved 86% of plant availability projected in the 2015 PSCR Plan due to two unplanned outages, and equipment issues that became known only after shutdown and inspection of inaccessible areas. Id., 194; Exhibit A-6, pgs. 13-15. The first forced outage at that facility occurred between March 19 and April 4, 2015, and was due to a water leak. The repair of the equipment, along other repairs to the system resulting from the leak and opportunistic repairs detailed by Mr. Colonnello, were undertaken during the 16-day outage. 2 TR 194-196. The second unplanned outage began on September 13, 2015, also due to a leak, and the repair over-lapped with a planned 40-day shut-down for refueling, taking the facility off-line for 61-days. Id., 197. This shutdown accommodated emergent work identified during engineering inspections and performed when the facility is off-line. Id., 197-198. Mr. Colonnello testified the Company acted in a reasonable and prudent manner in regards to the shutdowns at Fermi 2, and the record is devoid of any evidence to the contrary.

Based on the foregoing, the Company's proposed finding that its activities related to planned and unplanned outages at its generation facilities were reasonable and prudent is adopted.

B. Fossil Fuel Expenses

In its 2015 PSCR Plan the Company projected its fossil fuel costs at $883 million, while the actual expense, $844 million, was 4% lower. 2 TR 55-56; Exhibit A-8. Similarly, the actual unit cost of fossil fuel, $2.48/Mbtu, was 3% lower than the projected $2.56/Mbtu. The lower cost was due to a 4% reduction in coal costs that Mr. Pratt attributed to:

> After the development of the 2015 Plan, Monroe Power Plant successfully test burned high sulfur eastern (HSE) coal. DTE Electric entered into an agreement to purchase HSE coal at a delivered cost lower than the delivered cost of the mid sulfur eastern (MSE) coal that Monroe was forecasted to burn. The lower eastern coal delivered cost caused DTE Electric's power plants to economically burn more eastern coal than forecasted, which increased coal expense and unit cost of coal expense since eastern coal is more costly than western coal. DTE Electric's power plants burned less low sulfur western (LSW) coal than forecasted due to generation being lower than forecasted, as described by Witness Yurko. LSW [low sulfur western] coal was also delivered at a lower cost than forecasted due primarily to reduced rail and vessel transportation fuel surcharges, which was driven by lower oil prices.
> 2 TR 56-57.

Mr. Pratt testified that coal, particularly LSW which constitutes "a majority of the Company's fossil fuel requirements for 2015…", was procured and burned in a manner that reduced customer costs, while at the same time met system and equipment requirements, environmental regulations, and market conditions. Id., 60.

Oil costs were also lower than projected in the 2015 Plan, except for #6 oil that was higher but only represents 1% of the Company's oil consumption, which Mr. Pratt testified was due market conditions. Actual coke oven gas and blast furnace gas, along with the actual unit price for both, were also lower than projected because they are tied to the River Rouge unit cost of coal expense that was lower than projected. 2 TR 58-59. The actual petcoke expense was lower than projected due to reduced consumption, while the actual unit cost was higher because of an increase in supply price, which is purchased after the Plan is formulated. Id., 59.

The Company's actual natural gas expense of $37 million was 20% higher than projected, while the actual unit cost of $3.19/Mbtu was 31% lower than projected. Again, the variation was attributed to market conditions, Mr. Pratt termed the cost of natural gas as "significantly lower" than what was forecasted in the Plan, along with the fuel expenses of $14 million for two natural gas fired facilities that were acquired after the 2015 Plan was formulated. Id., 58.

Based on the foregoing, the Company proposes a finding that its fossil fuel expenses were reasonable and a result of prudent procurement practices. Since the record is devoid of any evidence to the contrary, that finding is adopted. 4

C. Other Power Supply Expenses and Interconnection Revenues

Ms. Brodnax testified to the Company's "booked cost of fuel consumed, NOX emission allowances consumed, SO2 emission allowances consumed, purchased power cost, cost of network transmission, third party wholesale power sales revenue, ancillary service revenue, urea and other expenses for the year ended December 31, 2015." 2 TR 72. In addition, she identified the accounts set forth in the Commission's Uniform System of Accounts the expenses are maintained under. Id. For the PSCR Year, Ms. Brodnax testified the total cost of purchased power was $396,516,952, the total net transmission expense was $258,092,667, the total fossil fuel expense was $852,877,377, and the total nuclear fuel expense was $46,113,108. Id., 73-77; Exhibits A-9 through A-12.

As noted by the Company, none of the parties challenged the facts and data contained in Ms. Brodnax's testimony, or the exhibits admitted through that testimony. Therefore, the proposed finding that the other power supply expenses and interconnection revenues the Company incurred during 2015 were reasonable and prudent is adopted.

D. ITC Network Transmission Expenses

Mr. Nick testified to the Company's total Base Transmission costs, including those incurred as a MISO Market Participant and as a network transmission customer in the ITC zone, and the methodology used to arrive at those costs. Id., 107-111; Exhibit A-15. Mr. Nick termed those costs, which were $12.1 million lower than the projection in the 2015 Plan, as being necessary and integral to the Company's service to its full-service bundled retail electric customers. 2 TR 111. Because the record does not contain any evidence to the contrary, the Company's proposed finding that the ITC network transmission costs incurred during the PSCR Year were reasonable and prudent is adopted.

E. Generation Unit Performance and UREA and Limestone Expenses

During the PSCR Year UREA expenses were $11.3 million, and limestone expenses were $2.47 million. Exhibit A-25. The Company utilizes UREA and limestone for environmental control at the Monroe Power Plant. Mr. Yurko testified to the Company's processes to acquire both substances, along with the reasons for slight variation between the actual expenses and the projected expenses in the Plan. Because the record is devoid of any evidence to the contrary, the Company's proposed finding that the expenses

4 As discussed below, the MEC takes issue with certain aspects of the Company's fossil fuel expenses, but does not seek a specific reduction in those expenses. See Closing Brief, pg. 25, fn 79. Dkt. #86.

incurred for UREA and limestone were reasonable and prudent is adopted.

The other component of this proposed finding goes to the Company's generating units. The MEC seeks a finding that those units were utilized uneconomically, while the Company argues the operation of the facilities in 2015 were reasonable and prudent. The position of both parties, along with a determination on the proposed finding, is addressed below.

F. Supply System Operations

This category includes system generation, third party wholesale purchases and sales of power, MISO market expenses, and emission allowances. Exhibit A-16. Mr. Burgdorf testified that in 2015 the Company's Net System Output (NSO) was 45,545 GWh at a cost of $1.206 billion, which equates to $26.49/MWh. Id. These actual expenses were lower than both the NSO forecast of $27.59/MWh and average MISO day-ahead round-the-clock (RTC) market price was $29/MWh at the Company load node. 2 TR 123. Actual wholesale prices during 2015 were $33.27/MWh on-peak for MISO day-ahead energy at the Michigan Hub were $33.27/MWh and $24.60/MWh off-peak, and $28.66/MWh RTC. Id., 124; Exhibit A-18. These prices were also lower than the projections in the Company's 2015 Plan, and thus while net MISO purchases were 451 GWh more than projected, its actual costs for MISO purchases were lower than the average RTC MISO LMP of $29.01/MWh. From a PSCR cost, the transfer price of a portion of renewable power purchases were higher than that average. Other MISO expenses, such as the Schedule 16 and 17 administrative costs, were in line with the projections in the PSCR Plan. 2 TR 127-128.

The Company had 4,108 GWh of wholesale energy sales that generated $87.7 million in revenues during 2015. During the same period, it made $2.23 million in capacity purchases for 23 MW of capacity through the MISO auction process. Exhibit A-17. Of that amount, $938,000 was to meet its MISO capacity requirements, and $1.3 million was for capacity lost due to the forced outage of its Ludington Unit 5, which Mr. Burgdorf termed catastrophic. 2 TR 125; Exhibit A-17. The Company also purchased 689 GWh from Public Utility Regulatory Policies Act of 1978 Qualifying Facilities, 1,356 GWh of energy from its Company-owned wind and solar renewable energy systems, and 1,417 GWh of energy from wind, landfill gas, and biomass renewable energy systems. The renewable purchases were made under contracts approved by the Commission under its 2008 PA 295 renewable energy plans. 2 TR 125. Finally, the Company's NO_x and SO_2 emissions allowance expenses were near the projections in the 2015 PSCR Plan, which Mr. Burgdorf attributed to the higher value of allowance sales. Id., 129-130; Exhibits A-19, A-20, and A-21.

Based on the foregoing, the Company proposes a finding that its actions concerning its supply system operations during the PSCR Year were reasonable and prudent. Since the evidence concerning this point is unrefuted, that finding is adopted.

G. Total 2015 PSCR Over-Recovery

Consistent with its 2014 PSCR reconciliation, Ms. Holmes testified the Company's beginning balance for January 2015 reflects a- PSCR under-recovery of $12,829,341, including interest. 2 TR 89; Exhibit A-14. At the end of 2015, the Company had a PSCR over-recovery of $14,552,237, excluding interest. 2 TR 89. When the net interest of

$878,743 is added to that amount, the 2015 PSCR over-recovery is $15,430,979, which will be treated as the beginning balance for 2016. Id., 90; Exhibit A-14. PSCR revenues in 2015 were impacted by the Commission's Order which held the Company over-stated its billings for a customer over a 6-year period. See *Complaint of Severstal Dearborn, LLC against DTE Electric Company*, Case No. U-17663, June 9, 2015 Order, pg. 9. [5] Ms. Holmes testified this resulted in a $13,450,310 overstatement of PSCR revenues during the same period, and is recorded as a credit in this case. 2 TR 89-90; Exhibit A-14, line 45. The other parties take issue with the Company's proposed treatment of that overstatement, while the Attorney General challenges the calculation of interest for the over/under recovery balance. Both issues are addressed below, as is the ultimate issue of the 2015 PSCR over-recovery amount set forth in this proposed finding.

H. Reduced Emissions Fuels Report

The Commission directed the Company to file a report in this proceeding concerning its Reduced Emissions Fuel (REF) Project that includes:

> (1) a detailed accounting of all resold coal and REF sales in order to ensure proper pricing and accounting; and (2) a thorough explanation of all operational effects of burning REF, including details on O&M and mitigation strategies. This information is necessary to ensure that the project continues to be reasonable and prudent. The Commission notes that it is also necessary to understand the historical performance of REF in terms of operational impacts, costs, and emissions reductions and any future plans for using REF and resold coal.
> Case No. U-16892-R, June 30, 2015 Order, pgs. 33-34.

5 The Company refers to the customer as both Severstal and its successor in interest, AK Steel. See 2 TR 94-95; see also Case No. U-17663, July 9, 2015 Order, pg. 1. However, the caption of Case No. U-17663, along with the Commission's ultimate award of a refund in that case, is to Severstal Dearborn, LLC, so this PFD will identify the customer accordingly.

Consistent with that directive, the Company entered the "2015 Reduced Emissions Fuel Report", co-sponsored by Mr. Banks, Mr. Pratt, Mr. Marietta, and Mr. O'Neill. 2 TR, 20-26, 141-147, 199-206; Exhibit A-7. Based on this evidence, the Company asserts it complied with the Commission's Order, and established the continued reasonableness and prudence of its REF project. The MEC takes issue with the sufficiency of the REF Report relative to the Commission's Order. That argument, along with a determination on the proposed finding on the REF Report and Project, is addressed below.

I. Generation and Dispatch Report

Similar to the REF Project, the Commission directed the Company to provide:

> [A] more in-depth analysis of DTE Electric's generation fleet performance relative to the market would be beneficial to understand the root cause(s) of DTE Electric's purchase of additional power and the potential impacts on customers, in both the near and long term. The Commission expects that this analysis would benchmark DTE Electric's generation to other generation units in terms of availability and efficiency based on available statistics, and attempt to distinguish anomalous events or conditions in a particular year such as 2012 from underlying unit characteristics and broader trends in plant performance. The analysis shall also include an evaluation of the methods used by the company to forecast generation and wholesale purchasing. In addition, DTE Electric shall explain how and why its actual generation has consistently been lower than projected. The Commission directs DTE Electric to file the analysis in the form of a detailed report, as set forth above, for Commission review in the company's 2015 PSCR reconciliation case.
> Case Nos. U-16434-R & U-16892-R, June 30, 2015 Order, pg. 14-15.

In response, the Company entered a 2015 Generation and Dispatch Report through Mr. Burgdorf, Mr. Yurko, and Mr. Colonnello. Exhibit A-6. The MEC also takes issue with the sufficiency of the Generation and Dispatch Report relative to the Commission's Order. That argument, along with a determination on the proposed finding on the Report, is addressed below.

Based on the foregoing, the Company contends that in 2015 it experienced a PSCR over-recovery of $15,430,979, including interest, and seeks approval to refund that amount to its PSCR customers. The Company also seeks approval of the calculation and PSCR treatment of the Severstal Payment incurred in Case No. U-17663.

IV.

CHALLENGES TO THE REPORTED 2015 PSCR REVENUES AND EXPENSES

A. The Michigan Environmental Council

The MEC raised four issues concerning the Company's 2015 PSCR reconciliation.

1. Commitment of Coal Units

The MEC asserts that during the PSCR Year the Company committed its coal units uneconomically by operating the units at a minimum load even when their dispatch cost was higher than the value of the generation. This, in turn, results in excess costs for PSCR customers. In support, it relies on Mr. Evans' testimony that the Company operated the units 99.5% of the time they were available, which he defined as either not undergoing scheduled maintenance or forced outage, and consistent with its "long-standing policy…" set forth in previous PSCR Plans. 2 TR 268. Mr. Evans arrived at this figure through Company data that reveals that on only six occasions, out of 75 opportunities, coal units were not operated in 2015. 2 TR 269; Exhibit MEC-2.

Mr. Evans determined that the Company had numerous opportunities beyond the 75 identified in Exhibit MEC-2 to take the coal units off-line because of economic inefficiencies. This is determination is based on an:

> [A]nalysis of each hour of 2015 the cost (fuel plus variable O&M cost) for operating each DTE coal unit. This cost is then compared hourly to the actual MISO market price (LMP) for each coal unit. The savings (and losses) that would have occurred, had the coal unit not operated in each hour, are then accumulated by calendar day and then by calendar month.
> 2 TR 269

Mr. Evans provided a breakdown of the monthly operating cost of the Company's coal units, except Trenton Channel 7A because of its operating limitations, compared to the cost of MISO purchases in place of the generation of each unit. Exhibit MEC-3. From that data, Mr. Evans identified the months and amounts that would have been saved by unit had it not been operated because the cost of MISO purchases was less than the operating cost. 2 TR 270. When the startup costs for each unit are deducted from the savings from the MISO purchases, Mr. Evans determined the Company would have saved $49,806,763 in PSCR costs had it properly committed its coal units. Exhibit MEC-3. 6

In his testimony, and based on his analysis of the Company's commitment of its coal units, Mr. Evans recommends the recoverable PSCR expenses be reduced "by $49,806,763 to reflect the uneconomic operation of its coal units in the year 2015." 2 TR 276. Concomitantly, Mr. Evans recommends that in future PSCR Plan cases the Company should propose to operate its coal units "only when economics justify such operation", and the Commission require the same. Id. However, the MEC is not seeking either a reduction in the Company's 2015 PSCR expenses commensurate with the excess costs Mr. Evans attributes to its policy and practice of operating its coal units as must run whenever they are available. Rather, the MEC requests a finding that the Company

6 The units are removed from service for less than one month, and based on the Company's minimum down time and run time requirements, Mr. Evans calculated the average number of startups at three per unit, and the total startups at 37. 2 TR 270-271.

committed the units as must-run during times when it was uneconomic to do so. See Initial Brief, pg. 25. Dkt. #86.

2. Generation and Dispatch Report

As noted under the Company's proposed Finding No. 9, this Report was filed under the Commission's directive in Case Nos. U-16434-R & U-16892-R. Exhibit A-6. The MEC argues the Report does not comply with the Commission's Order. On this point, Mr. Evans testified the Report fails to analyze the problems that led to the directive: since 2011 the Company has consistently underestimated its projected power purchases expenses and system generation. 2 TR 272-273. In fact, the Report effectively ignores the variance between the forecasted and actual purchases and generation between 2011 and 2014, and the Company refuses to identify its causes. Id., 274; Exhibit MEC-4.

Mr. Evans identified one of the major causes for the variance as a failure to properly factor natural gas market prices, which has a "strong relationship" with on-peak MISO market prices. 2 TR 274. For example, the Company disregarded its own forecast of natural gas prices in forecasting MISO market prices, leading it to overestimate the latter by 23% in 2015. Id., 275. Also contributing to the under estimation of MISO purchases, and over estimation of generation, is the methodology the Company employs to forecast generation at the Ludington pumped storage facility, and the assumption in its forecasts that all of its coal units will operate when available and irrespective of cost. Id., 275-276. In regards to Ludington, Mr. Evans recommended the Company be directed to "perform a detailed evaluation of the impact of forecasted MISO market prices and Ludington generation on the PSCR plan results for the years 2011 through 2015." Id., 276. In order to address the concerns that led to the Commission to require the filing of the Report, the MEC requests a finding that the Company has failed to adequately explain why its actual generation has been lower that forecasted.

3. Reduced Emissions Fuel Report

As noted under proposed Finding of Fact No. 8, *supra*, the Company filed this Report as Exhibit A-7 in response to the Commission's directive in U-16892-R. The MEC takes issue with the REF Report on two grounds. 7

i. Lack of Environmental Benefits

When it was initially proposed in Case No. U-16892, the Company identified benefits that would result from the REF Project, including quantified reductions of PSCR expenses associated with SO_2 and NOx, totaling $2.66 million in 2012, and future savings for mercury emissions. Exhibit MEC-8. In approving the Project, the Commission held it "is a reasonable means of attaining maximum emission reductions for minimum costs." Case No. U-16892, June 28, 2013 Order, pg. 31. However, Mr. Sansoucy characterized other Commission Orders as expressing a degree of skepticism of the claimed the environmental benefits of the Project. Mr. Sansoucy contends that skepticism was well-founded because the Company has now "abandoned any specific projection of environmental benefits from the REF Project." 2 TR 286-287; Exhibit A-7. Specifically, Mr. Sansoucy notes the Report does not disclose SO_2 and NOx benefit payments, despite testing the Company claims establish the chemicals used in process reduce these emissions, and the Company will not

7 Mr. Sansoucy raised general concern over the Company's potential liabilities arising from contractual guarantees, along with operational impacts from burning REF coal. The MEC has withdrawn any request for relief on these grounds, but reserves the right to raise the issues in future proceedings. Initial Brief, pg. 23. Along the same lines, the MEC makes

attempt to measure the Project's effect on those emissions. 2 TR 287; Exhibits A-7, pgs. 11-12, and MEC-12. Cost reductions from the Project for compliance with Mercury and Air Toxic Standards, through the use of more lower-cost Powdered Activated Carbon and less more expensive Brominated Powdered Activated Carbon, have also not been realized. Exhibit A-7, pgs. 12-13. As a result, the Project is now "simply a tax credit operation run using DTE Electric's power plants and coal supply chain for the benefit of DTE Energy's shareholders and with no quantified environmental benefits is substantially different from the version of the REF Project originally presented to the Commission." 2 TR 287-288.

The MEC argues that by abandoning the environmental benefits the Company claimed would flow from the REF Project, the basis for the Commission's approval without conditions or limitations has been removed. In light of the actual operation of the Project, the MEC questions whether that approval is now viable. Accordingly, the MEC requests the Commission reconsider its approval of the REF Project, and in this case, or a future case, impose conditions to compensate for the fact it does not provide any environmental benefits.

ii. Resold Coal

Through the REF Project, the Company sells its feedstock coal to Fuels Companies, which then treats the coal and resells it to the Company for use at its Belle River, Monroe, and St. Clair facilities. On occasion, the Fuels Companies sell untreated coal, termed "resold coal", back to the Company. In the Company's 2013 PSCR Plan case, the

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general reference to the tax implications of the REF Project. See Initial Brief, pgs. 13-14, 19; see also 2 TR 18-19, 283-285. However, the MEC has not recommended any PSCR adjustments, or any other relief, based on that issue.

Proposal for Decision determined resold coal does not, under the controlling contracts, have to be purchased for the same price the Company sold the coal. Case No. U-17097, November 8, 2013 Proposal for Decision, pg. 98. While the Commission declined to find the REF Project violated the Code of Conduct governing affiliate transactions, it did indicate those guidelines apply and the resold coal transactions are best addressed in reconciliation proceedings where actual expenses and other pricing data is available. See Case No. U-17097, December 4, 2014 Order, pgs. 18-19.

Mr. Sansoucy expressed two concerns with the resold coal aspect of the REF Project. First, the Company "is engaging in a complex series of affiliate transactions involving the same asset, and that there has not been a sufficient explanation of what the corresponding benefits and potential risks to DTE Electric may be." 2 TR 289. Second, the Company is selling the feedstock coal to its affiliate at whatever level it requests with the understanding it will repurchase the supply, and even sell it back again if the affiliate needs it, "regardless of whether it could obtain untreated coal on more favorable terms elsewhere on the open market." Id. Mr. Sansoucy believes the Company should, at the very least, examine whether supply can be obtained on the open market at a lower cost than it is paying for resold coal from its affiliates.

In the REF Report, the Company compares coal expenses with and without REF transactions between 2011 and 2015. Exhibit A-7, Attachment 5. Based on that comparison, the Company claims that REF has resulted in lower coal expenses at Monroe, but higher at Belle River and St. Clair. The higher costs are attributable to the methodology of setting the price of both the coal sold to the Fuel Companies and resold coal. 2 TR 291; Exhibit MEC-13. In this proceeding, the MEC does not contend the 2015 resold coal transactions violates the Company's Code of Conduct or Act 304, but indicates its intent to review these transactions in future proceedings.

The MEC does question why the Company is providing the Fuel Companies with resold coal transactions on demand. The Report does not address this issue, so what, if any, benefit derives to the Company from this practice is unknown. In rebuttal, Mr. Pratt testified "the REF Project Agreements state that to the extent that DTE Electric's coal requirements are not supplied as Refined coal, then the difference will be provided by the Fuel Companies as Resold coal." 2 TR 64; see also Exhibit MEC-9, §6.2(a), pg. 14. The benefit, also according to Mr. Pratt, is the Company has supply in the event its requirements cannot be met by Refined coal. 2 TR 64. But this does not address the MEC's concern that the Agreements also require the Company to purchase resold coal when requested by the Fuel Companies. Exhibit MEC-9, §6.2(a), pg. 14. Thus the concerns raised by Mr. Sansoucy, *supra*, about the Company's obligations concerning resold coal remain unresolved, and the MEC indicated its intent to also review the issue in future cases.

4. Severstal Payment

The MEC agrees with the disallowance of the $13,450,310 adjustment to 2015 PSCR expenses proposed by Staff, which is addressed below.

B. The Attorney General

The Attorney General contends the interest calculation utilized by the Company in arriving at the amount of the 2015 PSCR over-recovery is improper. In support, the

Attorney General notes Act 404 directs the Commission to determine "the time at which…" over-recoveries, under-recoveries, or both, occur. MCL 460.6j(16). Based on that determination, the interest rate on excess recoveries, i.e. over-recoveries, is the greater of the Company's short-term borrowing rate during the period or its authorized Return On Equity (ROE). Id. The interest rate for insufficient recoveries, i.e. under-recoveries, can only be based on the short-term borrowing rate. Mr. McGarry testified the Company's formula entails taking "½ of the sum of the current month's over- or under recovery plus the over- or under-recovery balance at the beginning of the current month multiplied by the applicable interest rate divided by 12 months." 2 TR 241. Mr. McGarry contends this formula fails to capture all the interest due to PSCR customers because it assumes an over/under recovery occurs uniformly over the course of a given month. Id. This is a valid assumption when either persists over a month, but when an over-recovery becomes an under-recovery, or vice versa, during the month "it is not a fair application of interest." Id.

To capture the fluctuations between an under-recovery and over-recovery within a given month, Mr. McGarry proposes the rate be applied on a daily basis so that when the balance reflects an under-recovery the short-term rate is applied, but a change to an over-recovery would have the ROE applied. Since the ROE is, according to Mr. McGarry, "almost always larger than the short-term borrowing rate…." using a daily measurement will provide a more accurate measure of the interest due to PSCR customers. Id., 243. Mr. McGarry characterized his daily measurement as relatively easy to perform through the following five steps:

1. Determine the average daily change (ADC) for a month by dividing the monthly over- or under-recovery by the number of days in the month. (Shown on line 59 of Exhibit AG-01.)

2. Determine the daily balance for each day of the month by adding the ADC to the previous day's balance. (Shown on lines 62 through 92 of Exhibit AG-01.)

3. Determine the two possible daily interest rates for the month (for over-recoveries, use the authorized rate of return, and for under-recoveries, use the short-term borrowing rate) by dividing both annual rates by the 365 days of the year. (Shown on lines 94 and 95 of Exhibit AG-01.)

4. Determine the daily interest by multiplying the appropriate daily interest rate times each day's either under- or over-recovery balance. (Shown on lines 97 through 127 of Exhibit AG-01.)

5. Add together the daily interest for all days of the month. (Shown on line 53 of Exhibit AG-01.)

2 TR 244.

Under this methodology, the interest in the 2015 PSCR over-recovery is $893,665, which is only $14,922 more than the interest calculated under the Company's formula. Exhibit AG-1. While that amount is relatively small, Mr. McGarry notes that in other years it may be "much more substantial." 2 TR 244. More importantly, Mr. McGarry contends his methodology is more accurate, complies with the requirement in MCL 460.6j(16) concerning the use of different interest rates for under-recoveries and over-recoveries, and does not dilute the amount due PSCR customers. Id., 244-245.

The Attorney General also takes issue with the Company's proposed treatment of the $13,450,310 Severstal payment by reducing 2015 PSCR revenues. On this point, Mr. McGarry testified the error occurred over an 6-year period that ended in 2014, and it is inequitable and prejudicial to force 2015 PSCR customers to make up for the Company's mistake. 2 TR 246. Mr. McGarry also characterized the Company's proposed treatment of the Severstal payment as "the very definition of retroactive ratemaking…." The Attorney General notes that retroactive ratemaking, which is changing a rate for service charged under a lawful order, is prohibited. See *Ford Motor Co v Public Service Commission*, 221 Mich App 370, 376; 526 NW2d 224 (1997). To avoid this prohibition, and not assess the Severstal payment to PSCR customers, the Attorney General contends the cost should be borne by the Company's shareholders.

By disallowing the $13,450,310 Severstal payment, the PSCR over-recovery increases to $29,527,496. Exhibit AG-2. When the interest calculation proposed by the Attorney General is applied to that amount, the total PSCR over-recovery is $29,529,012. 2 TR 247; Exhibit AG-3.

C. Michigan Public Service Commission Staff

Staff also seeks the disallowance the Company's proposal to recoup the Severstal payment in this proceeding. As a preface, Staff notes the Company only made a cursory statement concerning the treatment of the payment in its initial filing. See TR 89-90. However, when the record in Case No. U-17663 is considered, the $19.651 million overbilling of Severstal between 2008 and 2014 was "a direct result of the Company's unreasonable and imprudent actions…." Id., 300. Ms. Wagner testified the basis of that conclusion was the error would have been discovered shortly after installation on January 31, 2008 had the Company conducted an inspection within 60 days as it was required to do under R 460.3603. Id., 301-302. The Company acknowledged it failed to comply with the rule. Exhibit S-2. Similarly, R 430.3305 requires the multiplier be displayed on the face of the meter. Since the error was the result of an incorrect multiplier, the qualified person conducting the inspection under R 460.3603 would have "easily caught the error." 2 TR 302; 2 TR 302; Exhibits S-3, S-4.

Because the Company failed to fulfill its obligations to inspect the meter within 60 days of installation, the error was not discovered and the customer was over-billed for 6 years. To allow the Company to recover the amount over-billed in this proceeding would, according to Ms. Wagner, constitute "rewarding them for unreasonable and imprudent actions." 2 TR 303. Accordingly, Staff seeks the disallowance of the Severstal payment and the PSCR over-recovery be set at $29,527,496, including interest. 2 TR 303; Exhibit S-1.

V.

ANALYSIS OF THE CHALLENGES

A. Commitment of Coal Units

As noted, the MEC is not seeking a reduction in the Company's 2015 PSCR expenses based on Mr. Evans' analysis of the operation of the coal units, or any directive from the Commission concerning future PSCR Plan cases or the actual operation of the facilities. Rather, it is requesting a finding that the Company "committed its coal units must-run when it was uneconomic to do so." Initial Brief, pg. 25. Based on this requested relief, the MEC is not seeking the Commission adopt Mr. Evan's recommendations concerning the evaluation of MISO prices and Ludington generation between 2011 and 2015, and what future PSCR Plans should propose concerning the operation of coal units. Therefore, the Company's argument that both contentions exceed the scope of a reconciliation proceeding need not be addressed.

The Company also argues that Mr. Evans' qualifications, when compared to its witnesses, require little weight be afforded his opinions regarding the actual operation of coal units in 2015. In response, the MEC contends Mr. Evans' experience in mathematics and modeling, particularly his work for the company that developed the PROMOD modeling tool and his use of that program, render him capable of opining on the economics of the Company's actual operation of its coal units. 2 TR 266-276; Exhibit MEC-1. A fair reading of Mr. Evans' testimony indicates it goes to the proposition that based on his analysis the Company operated its coal units in a manner that was economically inefficient compared to the cost of energy on MISO. Thus the Company's argument that Mr. Evans is not qualified to testify regarding power plant engineering, or the day-to-day operation of the coal units, is misplaced. At a minimum, Mr. Evans was qualified to testify regarding the economics of the Company's commitment of its coal units.

Turning to the merits of Mr. Evans analysis, the contention that on only 6 out of 75 opportunities were available coal units taken off-line in order to reduce expenses is not accurate. 2 TR 269. Rather, Mr. Burgdorf's testimony concerning the Economic Reserve and Cycling Opportunities Report, provided to the MEC in discovery (Exhibits A-27), establishes Mr. Evans mischaracterized the opportunities where the Company may have been able to act:

- First, 24 of the 78 opportunities shown in the daily reports are actually associated with the six economic reserve shutdowns that the Company did in fact act on. The reports are designed to continue to show opportunities even when the units are offline.

- Second, eight of the remaining 54 opportunities were associated with shutting Trenton Channel 7a down and the unit was in fact brought down coincidently for a planned outage.

- Third, an additional 35 of the remaining 46 opportunities were for future dates within the two-week projection period. These would only be acted on if the opportunities continued to present themselves when those dates fell within the next operating day. In many cases, these opportunities would no longer be present as market conditions change.

- Fourth, two of the remaining 11 opportunities did not exist and were associated with an error in the report highlighting as discussed in discovery response MECDE-2.9f provided to MEC, shown as Exhibit A-28.

- Fifth, seven of the remaining nine opportunities were not taken due to plant constraints or unit testing.

- Finally, the last two opportunities were not acted on since they only presented themselves in a single report and were no longer present the next day.

2 TR 137.

In addition to the faulty premise regarding opportunities to take coal units off line, Mr. Yurko identified 5 "critical flaws" relative to the purported $50 million in excess costs Mr. Evans' analysis attributed to the Company's commitment practice compared to his proposal:

1. [U]sed Real-Time (RT) instead of Day-Ahead (DA) Market Prices (LMPs)
2. [U]sed "as-burned" instead of "replacement" fuel costs for the decision making of the coal units, which is contrary to sound economic principals.
3. [I]gnored market depth (the fact that market prices would have been higher if units were shut down), which, if it had been included, would lead to a higher purchase power expense.
4. [S]hut down units during periods they were actually economic to operate.
5. [I]gnored major MISO grid and local reliability concerns such as the need for spinning reserves, load following, and voltage support.

2 TR 170

Mr. Yurko provided a detailed explanation of the excess costs arising from each of the flaws, any of which standing alone inveigh against the reliability of Mr. Evans' analysis.

2 TR 171-177. For example, the RT pricing Mr. Evans used is known only after the commitment decision is made, which as Mr. Yurko notes is "hindsight." Id., 171. Further, DA market prices are used in 90% of MISO wholesale energy transactions, while RT market prices, which Mr. Evans used, are utilized to settle differences between DA and actual operations. Id.; Exhibit A-6. When DA market prices are substituted for RT market prices, the excess costs Mr. Evans claims are reduced by $13 million. 2 TR 171. Mr. Evans use of as-burned fuel cost for unit dispatch, instead of the dispatch fuel costs the Company has used, and the Commission has approved, inflated his purported cost savings by $36 million. Id., 172-174. Taken together, replacing the two pricing components used by Mr. Evans with the actual pricing components used by the Company, and which Mr. Evans does not indicate are inaccurate or unsound, effectively remove the $50 million excess costs he claims resulted from the uneconomic commitment of the coal units.

The Company also established an effect of Mr. Evans proposed commitment of the coal units would be a corresponding increase in MISO market prices. For example, taking all of the Company's available coal units off-line in December of 2015, thereby removing 4,415 MW of generation, would have resulted in a $2.14/MWH LMP market depth increase in the MISO market. Id., 175. Mr. Yurko termed this increase as conservative because it did not factor in costs associated with congestion and marginal losses attributable to removing the Company's generation. The increase in the MISO market prices, which the Company would bear to replace the generation it would forego, would eliminate $14 million from the 2015 excess costs Mr. Evans contends would result from the "proper coal commitment." Id., 176. Finally, Mr. Yurko established that by failing to operate its coal units when it was economical to do so, and using the proper pricing components, *supra*, would increase PSCR costs by $57 million. Id., 177. Taken together, Mr. Evans' analysis was in error by $120 million based on its inherent flaws, and the $50 million in reduced costs he contends would result in from his commitment strategy would actually result in a $70 million increase in PSCR costs in 2015. Id., 171.

The fifth flaw identified by Mr. Yurko, which is incapable of being quantified, are the system impacts from removing generation on the level that would be necessary under Mr. Evans' commitment strategy. For example, during the summer the Company exceeded 2,000 MW off-line 6% of the time and has never had more than 3,000 MW off line, while under Mr. Evans' proposal that amount of generation would be off line 65% and 38% of the time, respectively. Id., 175; Exhibit MEC-37. The system reliability issues of removing that level of generation was never addressed by Mr. Evans, nor was how MISO would react to the removal of generation that would result from his proposal.

Based on the foregoing, Mr. Evans' proposed commitment strategy of the Company's coal units is fundamentally flawed. Further, the MEC's proposed finding that the Company's committed those units in an uneconomical manner, which is based on Mr. Evans' analysis, should be rejected. Based on this record, the Company's proposed finding that its Generation Unit Performance in 2015 was reasonable and prudent is adopted.

B. <u>Generation and Dispatch Report</u>

The MEC does not seek an adjustment to 2015 PSCR revenues or expenses based on this Report, but rather requests a finding that the Company failed to adequately explain the variance between forecasted and actual generation between 2011 and 2015. Initial Brief, pg. 25. In response, the Company argues both steps are beyond the scope of this proceeding, which consists of the Commission reconciling "the revenues recorded pursuant to the power supply cost recovery factors and the allowance for cost of power supply included in the base rates established in the latest commission order for the utility with the amounts actually expensed and included in the cost of power supply by the utility." MCL 460.6j(12). As the Company notes, a PSCR Reconciliation is not the forum to re-evaluate prior PSCR Plans, but is limited to the 12-month period that is the PSCR Year, which in this case is January 1 to December 31, 2015. In both regards the Company is correct, under its express provisions Act 304 establishes "a retrospective proceeding limited to reconciling expenses incurred during the 2015 PSCR Year with the Commission-approved PSCR rate…." Initial Brief, pg. 29. Nether of the recommendations the MEC and Mr. Evans propose relative to the Report fall under the scope of this authority.

While the relief sought by the MEC in regards to the Report is outside the scope of Act 304, the Commission directed it be submitted for its review in this proceeding. See Case Nos. U-16434-R and U-16892-R, June 30, 2015 Order, pg. 15. Therefore, the Report will be considered to determine if it complies with that directive. The Report is divided into three sections: MISO Market Purchases and Sales; Fossil Generation and Dispatch Report; and Fermi Generation. Exhibit A-6. In addition, Tables are included that provide forecast and actual data of generation, heat rates and coal blends of the Company's facilities, comparison of certain facilities with peer groups, and forecast and actual electric market and natural gas prices. Id. The Report also responds to one of the Commission's stated purposes in requesting it be submitted, which was also a basis of the

MEC's criticisms: the variance between projected and actual wholesale purchases and generation data. The Report attributes the variances to a number of factors, such as accounting practices, whose use is required under FERC rules, which serve to inflate sales and purchase numbers from PSCR projections. Id., pg. 1. The Fossil Generation and Dispatch Section provides a similar analysis, and notes the Company has had an overall 99.3% accuracy rate in the MISO era (2005-2015), and 98.3% rate in 2015. Id., pg. 3. A detailed analysis of the reasons behind the 1.7% variance between projected and actual generation, both by facility and overall, for 2015 is also provided. Id., pgs. 3-12. Finally, the benchmarks the Commission requested are included in the Report. Id., pgs. 12-13, Table 8.

Based on the foregoing, the 2015 Generation and Dispatch Report entered on this record as Exhibit A-6 complies with the Commission's directive in Case Nos. U-16434-R and U-16892-R, June 30, 2015 Order, pgs. 14-15.

C. REF Report

The MEC also does not does not seek an adjustment to 2015 PSCR revenues or expenses based on either this Report, or the REF Project itself. Rather, it requests the Commission reconsider its approval of the REF Project, and consider imposing new conditions based on its contention the Company has abandoned its claims the Project provides quantifiable environmental benefits. In addition, the MEC requests a finding the Company has not adequately explained the benefits of the resold coal transactions made through the REF Project.

The Company argues the MEC's challenges to the REF Project are barred under the doctrine of collateral estoppel. The doctrine precludes re-litigating an issue that was fully litigated and decided in a previous proceeding involving the same parties with mutuality of estoppel, and applies to administrative agencies under circumstances that are satisfied in this matter. See *Storey v Meijer, Inc.*, 431 Mich 368, 372-373; 429 NW2d 169 (1998). Undoubtedly, the REF Project has been extensively litigated, starting with its approval in the Company's 2012 PSCR Plan case. See Case No. U-16892, June 28, 2013 Order, pgs. 31-34. 8 Subsequently, as the Company also notes, the Project has been reviewed in seven PSCR proceedings. See Reply Brief, pg. 33, fn 54. However, the MEC challenges are to the sufficiency of the REF Report, which the Commission deemed necessary to both "ensure that the project remains reasonable and prudent", and "understand the historical performance of REF in terms of operational impacts, costs, and emissions reductions and any future plans for using REF and resold coal." Case No. U-16892-R, June 30, 2015 Order, pg. 34. This is entirely consistent with the Act 304 reconciliation process, which requires a review of expenses incurred over a discrete period of time, i.e. PSCR Year, to determine if they are recoverable. See MCL 460.6j(12) and (14). Accordingly, the MEC's challenges to the REF Report are not barred under the doctrine of collateral estoppel.

The Company acknowledges that while it is no longer quantifying the environmental benefits of REF, and indicated the same in its 2017 PSCR Plan case, those benefits are

8 That approval was affirmed by the Court of Appeals. See *MEC v Public Service Commission*, 311 Mich App 204; 874 NW2d 398 (2015).

still accruing to its customers. [9] For example, the Project is expected to continue to reduce its SO_2 and NOx emissions, which will result in cost savings to customers. Exhibit A-7, pg. 12. Ending the NOx benefit payment to the Fuel Companies will provide similar savings. Id., 150-153. The REF Project has also allowed the Company to reduce sorbent costs, and capital costs associated with not having to use two types of sorbents, for its mercury emissions. Id. Based on this record, the elimination of quantifying environmental benefits does not warrant reconsideration of the approval of the REF Project. The MEC's companion request, imposing new, but unspecified, conditions on the Project is also unwarranted.

The Commission required the REF Report provide, *inter alia*, "a detailed accounting of all resold coal and REF sales in order to ensure proper pricing and accounting." Case No. U-16892-R, June 30, 2015 Order, pg. 33. To that end, the Report provided a summary of all transactions of fuel types with the Fuel Companies between 2009 and 2015. Exhibit A-7, Attachment 5. Also included is a pro forma comparative accounting that assumes inventory and expenses had the Project been in existence. Id. The Report provides the methodology of the pro forma accounting, a comparative analysis, and conclusion that the Company is utilizing proper pricing and accounting measures for the resold coal component of the Project. Id., pgs. 27-28. Further, the resold coal process remains the same as that approved by the Commission in 2013. 2 TR 64-65; See Case No. U-16892, June 28, 2013, pg. 33; see also *MEC v Public Service Commission*, 311 Mich App 204, 214; 874 NW2d 398 (2015). Based on this evidence, the REF Report complies with the Commission's Order in Case No. U-16892-R. Therefore, the MEC's proposed finding that

9 The Commission approved that PSCR Plan. Case No. U-17920, January 12, 2017 Order.

the Report is deficient because it does not explain the benefit of the resold coal component cannot be sustained.

D. Calculation of Interest

As noted, the Company calculates interest on over/under recoveries on a monthly basis, and then applies the applicable rate. Exhibit A-14. The Attorney General takes issue with the formula on a number of grounds. The first is the argument concerning the statutory requirement that a refund, credit, or additional charge be set for the time at which an over-recovery, an under-recovery, or both occurred. MCL 460.6j(16). Because the Company's formula does not capture all of the interest due to PSCR customers under all circumstances, i.e. when the balance shifts between over/under recoveries within a month, the Attorney General asserts the Company's formula is legally deficient. See Initial Brief, pgs. 3-6. However, the methodology the Attorney General proposes to calculate interest on a daily basis does not achieve that purpose. Rather, the calculation is premised on what Mr. McGarry termed the "average daily change", which is step 1 of the 5 steps he proposes, and entails taking the average of beginning and ending under/over-recovery balance for a month and divides it by the number of days in that month. 2 TR 244; Exhibit AG-1. Ms. Holmes testified that to determine the actual daily over/under balance the Company would have to close its books on a daily basis, as opposed to its current practice of closing its books on a monthly accrual basis. 2 TR 100. This, in turn, would require the Company to hire more accounting and IT professionals, upgrade its IT hardware, and incur additional attendant expenses for items such as operation and maintenance and depreciation. Id. Ms. Holmes noted these increased costs would "far out-weigh any adjustment to calculating the interest on over/under recovery on a daily basis." Id.

Staff also questions the prudence of the Attorney General's proposal. As a preface, Ms. Wagner contends the Company's current practice of calculating interest on a monthly basis does not, contrary to Mr. McGarry's claim, harm PSCR customers. Id., 305. In fact, Ms. Wagner notes that using a daily interest formula would increase costs in certain circumstances, including in this case. Id., 306-308. Ms. Wagner also applied the daily interest formula to the Company's last PSCR reconciliation, U-17319-R, and found it would result in increased costs to PSCR customers. Id., 306; Exhibit S-5. Ms. Wagner also determined Mr. McGarry's proposed formula misstated the calculated interest, either due to rounding of the interest rate or interest dollar amounts, or charging an extra half-day of interest for the 7 months with 31 days. 2 TR 307. This calls into question the accuracy of $14,922 increase in interest from the Company's formula that Mr. McGarry testified would result under his proposed average daily formula. Exhibit AG-1.

Based on this record, the formula proposed by the Attorney General would not track the average daily balances, but rather the average daily change under the first step of the five steps Mr. McGarry identified. To obtain the average daily balance, along with the purported benefits of that formula, the Company would have to switch from its current practice of closing its books on a monthly accrual basis to closing its books on a daily basis. Such a switch would necessitate a substantial investment of ratepayer funds. The benefit of those expenditures would be negligible because using a true average daily balance to set interest rates for over-recoveries and under-recoveries would not result in any appreciable savings for PSCR customers. To the contrary, based on Ms. Wagner's testimony, the change would, under certain circumstances, increase costs for those customers. 4 TR 306-308; Exhibit S-5. Finally, Act 304 does not mandate the formula proposed by the Attorney General for calculating interest, or prohibit the formula the Company currently utilizes. Rather, the statute requires that a refund, credit, or additional charge be set for the time at which an over-recovery, an under-recovery, or both occurred. MCL 460.6j(16). That time can be, and has under previous PSCR reconciliations, on a monthly basis.

As both Ms. Holmes and Ms. Wagner note, the Company is utilizing a Commission approved formula to calculate interest on a monthly basis. 2 TR 101, 307. The record also indicates that the Company is accurately calculating and applying the appropriate interest rate to over-recoveries and under-recoveries resulting from the monthly basis formula. Id., 306. Accordingly, the Attorney General's proposed formula for calculating interest for over-recoveries and under-recoveries cannot be accepted.

E. Severstal Payment

In this case the Company is not seeking to recover all of its payment to Severstal, but only the $13.45 million of power supply charges for electricity that it billed, collected, and ultimately refunded. 2 TR 220-221.[10] In Case No. U-17663 the Company identified that amount as representing the PSCR impact of the 6 years of overbilling. Id., 96. Ms. Holmes testified the treatment of PSCR portion of the Severstal Payment is consistent with how other implicated surcharges in the over-billing were handled, using the adjustments through an annual securitization true-up in Case No. U-12478 as an example. Id., 96-97. Mr. Johnston agreed with this characterization, noting the request to recover

$13.5 million from PSCR customers as "a true-up of revenues related to a manual cancel-rebill process, which occurs from time to time." Id., 221. Ms. Holmes also testified the one-time adjustment it seeks in this case is consistent with the Commission's PSCR treatment of a $28,607,330 refund the Company received from Consumes Energy for over-payments it made for a number of years due to a billing error. See Case No. U-17097-R, February 26, 2015 Proposal for Decision pg. 4, and June 30, 2015 Order, pgs. 2-3. In fact, the Commission allowed Consumers Energy to recover the payment through the PSCR reconciliation process as a cost of providing power. See Case No. U-16890-R, May 2, 2014 Order, pg. 6.

Consistent with the Commission's treatment of refunds and payments arising from a billing error in Case Nos. U-17097-R and U-16890-R, the Company's proposal to include the PSCR portion of the Severstal Payment in this case does not constitute retroactive ratemaking. Similarly, the fact that the payment covers events between 2008 and 2014, but recovery is sought from 2015 PSCR customers, does not preclude that relief under those holdings. Therefore, the Attorney General's arguments on both points cannot be sustained.

The legal effect of the Commission's PSCR treatment of over-payments and refunds arising from billing errors inveigh against the Attorney General's arguments. However, the facts in this case distinguish it from Case Nos. U-17097-R and U-16890-R, where the error was made by a 3rd party, and when it was discovered the parties promptly made arrangements for reimbursement. The Commission allowed inclusion of the payment in

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10 In U-17663 the Commission determined the total amount the Company over-billed Severstal was $19.651 million, and awarded 7% interest per annum until the entire amount is paid.

PSCR costs because, in part, “the error was not within Consumers’ control….” Case No. U-16890-R, May 2, 2014 Order, pg. 6. The issue of responsibility for the error in this case goes to Staff’s contention the Severstal Payment should be disallowed because it was a result of the Company’s unreasonable and imprudent actions. Specifically, the Company’s failure to inspect the meters within 60 days of installation as required by R 460.3603 perpetuated the error for 6 years.

Through the testimony of Mr. Johnston, the Company acknowledges “the metering inspections required by the Technical Standards for Electric Service were not strictly followed…”, but contends “there were extenuating and unique circumstances related to providing continuous retail electric service to AK Steel, which must be considered and which render DTE Electric’s actions both reasonable and prudent.” 2 TR 217. Mr. Johnston indicated those circumstances began when field work was performed in preparation of Severstal becoming a retail electric full-service customer of the Company on February 1, 2008:

> In order to properly meter the AK Steel load served through Substation 42A, DTE Electric was required to install three revenue meters (meter numbers 9506528, 9506533, & 9506661), one for each of the 120kW/13.8kV transformers at that substation. The meter installation work was completed on January 31, 2008 and was accomplished without interruption to AK Steel’s operations by utilizing the existing instrument transformers (potential transformers and current transformers) and connecting the DTE Electric revenue meters in the potential and current transformer’s secondary circuits, thus not requiring contact or connection to high voltage primary equipment. This installation methodology was followed because AK Steel refused to de-energize the electric service and refused to grant DTE access and control of the potential and current transformers utilized at the substation. Safe installation of DTE-owned instrument transformers would have required shutdown of each of the transformers at a significant expense to AK Steel. 2 TR 218-219.

Mr. Johnston reviewed the hourly usage data from the three meters for the period of 2008 to 2014. Based on that review, he determined that subsequent to the installation the Company had limited "opportunities to safely perform the required meter inspection pursuant to Rule 603…", and only then if the customer had given notice it would be at zero usage for a sufficient amount of time. Id., 219-220. In effect, the significant monetary impact to the customer if its energy supply was interrupted affected the methodology the Company used to install the meters, and, according to Mr. Johnston, precluded the safe inspect the meters after installation. Thus the Company argues the billing error that resulted was not the result of imprudent or unreasonable actions, and the Severstal Payment should be included in its PSCR expenses.

Mr. Johnston also took issue with Ms. Wagner's characterization of the Severstal Payment the Company is seeking to recover in this proceeding as a "reward". Id., 303. To the contrary, the adjustment the Company is seeking "a reversal of previously reconciled PSCR base and factor revenues and R10 revenues, which have been refunded to AK Steel…" in Case No. U-17663, where the Commission accepted Mr. Johnston's "calculations regarding the proper billing amounts…accurately reflect the DTE Electric overcharges." Id., 221. Had the error not occurred, the Company would have recovered the $13.45 million from its PSCR customers as a legitimate power supply expense incurred to provide service. Id., 222. Thus rather than a reward, the adjustment represents the reduced PSCR sales volumes the Company experienced as a result of the error. Id.

Based on the testimony of Ms. Holmes and Mr. Johnston, the $13.45 million adjustment the Company is seeking in this proceeding represents the amount of the PSCR costs that is attributable to the Severstal Payment. Staff does not dispute that the adjustment is a PSCR expense, only that is cannot be recovered because it is the direct result of the Company's unreasonable and imprudent actions that resulted in the 6 years of over-billing. Thus Staff is not seeking to punish the Company for the over-billing, but rather to preclude recovery under MCL 460.6j(12). 11 Similarly, the Company is not seeking a reward, but rather to recover a PSCR expense it claims it is entitled to under the same provision.

Prior to addressing the merits of Staff's contention, it is necessary to address a companion argument Staff raised in its Initial Brief: whether the Company met its burden to establish by a preponderance its actions underlying the Severstal Payment were reasonable and prudent. As it pertains to the Application, the Company provided little information concerning the $13,450,310 expense. See 2 TR 89-90; Exhibit A-14, line 45. Further, the Company provided no information concerning the circumstances surrounding the error that lead to the payment. Accordingly, Staff's characterization of the information the Company provided in its Application concerning the Severstal Payment as "scant" is accurate. Initial Brief, pg. 8. Staff's contention that the Company failed to meet its burden to establish in its Application the adjustment was the result of reasonable and prudent actions is also accurate. However, the evidence the Company entered through the rebuttal testimony cured the deficiency in the Application, thereby allowing a determination of this issue on its merits. Having said that, it is incumbent for the Company to document all aspects of its case in its case-in-chief, as opposed to waiting for a party to raise a concern

11 Neither the Company's liability for, nor the amount of, the Severstal Payment was established until the Commission entered its Order in Case No. U-17663 on July 9, 2015. Therefore, the expense was not included in the Company's 2015 PSCR Plan, which was filed, under Case No. U-17680, on September 30, 2014. Since the expense could not have been considered or approved in the 2015 PSCR Plan, it is appropriate to consider its reasonableness and prudence of the expense in this proceeding under §6j(12).

and respond in rebuttal, particularly when it seeks an adjustment of a “unique” expense like the Severstal Payment.

As for the merits of Staff’s challenge to the Severstal Payment, the Company points to the circumstances surrounding the installation of the meters as precluding an inspection, thereby excusing its failure to comply with R 460.3603. However, besides Mr. Johnston’s testimony that the meters were installed in a manner that did not require Severstal to de-energize electric service, no substantive evidence was entered that indicates the same constraint prevented the Company from inspecting the meters. Rather, Mr. Johnston conducted an after-the-fact review of Severstal’s usage and concluded the first instance of zero usage was a 1-hour period in January 2010, and the first opportunity to “safely perform the required meter inspection…” was in May of 2010. Left unsaid is how the Company could install the meters, but not inspect them, when the facility was operating. More importantly, the record is devoid of any evidence that the Company took any affirmative steps to comply with R 460.3603. For example, the Company did not provide evidence that it attempted to work with the customer at any point after February 1, 2008 to make arrangements to inspect the meters. Given the significant amount of the over-billing, not to mention the amount Severstal paid for the electricity it actually used for 6 years, it is not unreasonable to assume it would have been receptive to, or at least considered, making accommodations to ensure the meters were working properly had the Company made that request. In any event, rather than do nothing, the Company should have, as Staff notes, notified the Commission that it was unable to inspect the meters to ensure they were properly installed and operating consistent with its obligations under R 460.3603.

However, the Company took none of those steps, and as a result one of the purposes of R 460.3603, ensuring the meters operated properly, was defeated.

Based on the foregoing, the Company was obligated to have a qualified person inspect the Severstal meters within 60 days after installation "to determine the proper operation and wiring connections." R 460.3603. Had such an inspection been carried out, the error that resulted in the over-billing would have been discovered and rectified by April 1, 2008. The failure to comply with R 460.3603 allowed the error to perpetuate until April of 2014, when an inspection, observed by three of the Company's employees, confirmed the meters were not properly operating, prompting them to be immediately replaced to rectify the error. Case No. U-17663, July 9, 2015 Order, pg. 3. That inspection was a result of Severstal's internal investigation that revealed the Company's meters were reading higher usage than its own meters. Id., pg. 2-3. The Company made no effort, let alone a reasonable one, to comply with the 60-day post installation inspection requirement R 460.3603. Accordingly, the $13,450,310 PSCR expense the Company seeks to recover in this proceeding was the result of its unreasonable and imprudent actions, and the adjustment should not be allowed. MCL 460.6j(12).

Based on the foregoing, Staff's proposed over-recovery of $29,527,496, including interest, should be used as the Company's beginning balance for its 2016 PSCR Reconciliation.

VI.

CONCLUSION

The $13,450,310 payment to Severstal should not be recovered as a PSCR expense because it was incurred as a result of the Company's actions that were both unreasonable and imprudent. Based on that adjustment, the Company had a 2015 PSCR over-recovery of $29,527,496, including interest, and that amount should be set as the Company's beginning balance for its 2016 PSCR reconciliation. See Exhibit S-1. With the exception of that adjustment, the Company's 2015 PSCR expenses and revenues set forth on this record should be approved.

MICHIGAN ADMINISTRATIVE HEARING SYSTEM
For the Michigan Public Service Commission

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April 6, 2017 Dennis W. Mack
Lansing, Michigan Administrative Law Judge